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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MANUEL HEIM,)	Case No. LA CV 15-2059 JFW (JCG)
)	
Petitioner,)	ORDER (1) ACCEPTING REPORT AND
)	RECOMMENDATION OF UNITED
v.)	STATES MAGISTRATE JUDGE AND
)	(2) DENYING HABEAS PETITION,
T. PEREZ, <i>Warden</i> , et al.,)	CERTIFICATE OF APPEALABILITY,
)	AND EVIDENTIARY HEARING
Respondents.)	
)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate Judge's Report and Recommendation ("R&R"), Petitioner's Objections to the R&R, and the remaining record, and has made a *de novo* determination.

In his Objections, Petitioner opposes the R&R's conclusion that the Petition is untimely under the Antiterrorism and Effective Death Penalty Act ("AEDPA"). (Objections at 1-8.) Petitioner raises three arguments, all of which must fail.

1. Statutory Tolling

First, Petitioner argues that his Petition is rendered timely by statutory tolling. (Objections at 2-4, 8.) Specifically, Petitioner argues that he is entitled to statutory

1 tolling “from the date of his first state [h]abeas petition . . . until the denial of his last
2 state habeas petition.” (Objections at 2.)

3 As a matter of law, Petitioner is incorrect. *See Callender v. Knipp*, 2014 WL
4 435971, at *3 (C.D. Cal. Jan. 30, 2014) (AEDPA’s limitation period is tolled “during
5 the pendency of *one full round* of state collateral review, which includes the intervals
6 between *a lower court decision* and the filing of *a petition in a higher court*, so long as
7 the petitioner *does not unreasonably delay between filings*”) (emphasis added); *Banjo*
8 *v. Ayers*, 614 F.3d 964, 968 (9th Cir. 2010) (“[P]eriods between different rounds of
9 collateral attack are not tolled.”).¹

10 Thus, the Court finds that no additional statutory tolling – beyond that already
11 calculated by the Magistrate Judge – is warranted here. (*See* R&R at 3-4.)

12 2. Equitable Tolling

13 Second, Petitioner argues that his Petition is rendered timely by equitable
14 tolling. (Objections at 2-3, 5.) In particular, Petitioner argues that he is entitled to
15 equitable tolling because: (1) due to a facility transfer, he belatedly learned of the
16 California Supreme Court’s decision regarding his petition for review, (2) he is “a
17 layman at law,” unfamiliar with the court’s procedures, and (3) “[h]e waited nearly one
18 year[,] th[e]n spoke to a fellow inmate who is also not a lawyer.” (Objections at 2-3.)

19 As a rule, AEDPA’s limitation period is subject to equitable tolling only if
20 Petitioner can show that (1) he pursued his rights diligently and (2) an “extraordinary
21 circumstance prevented timely filing.” *Yeh v. Martel*, 751 F.3d 1075, 1077 (9th Cir.
22

23 ¹ Petitioner also seeks additional statutory tolling for a petition for mandate that he supposedly
24 sent to the California Supreme Court on June 2, 2014 – the *exact date* of the AEDPA limitation
25 period’s expiration, as determined by the Magistrate Judge – but argues that apparently never reached
26 the court either because it was “lost” in the mail or because “one of the CDC staff was playing games
27 with [Petitioner].” (Objections at 3, 36-37.) Notably, a review of the prison’s database revealed no
28 outgoing legal mail for Petitioner in June 2014. (*Id.* at 20-21.) In any case, however, statutory
tolling is available only for “properly filed” applications for collateral review, and thus would not
apply here. *See* 28 U.S.C. § 2244(d)(2); *Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (“[A]n application is
‘properly filed’ when its delivery and acceptance are in compliance with the applicable laws and
rules governing filings.”) (emphasis in original).

1 2014). Generally, “the threshold necessary to trigger equitable tolling [under AEDPA]
 2 is very high, lest the exceptions swallow the rule.” *Miranda v. Castro*, 292 F.3d 1063,
 3 1066 (9th Cir. 2002).

4 Here, most of the experiences alleged are not “extraordinary circumstances” for
 5 the purposes of equitable tolling analysis. *See Johnson v. United States*, 544 U.S. 295,
 6 311 (2005) (“[W]e have never accepted *pro se* representation alone or procedural
 7 ignorance as an excuse for prolonged inattention when a statute’s clear policy calls for
 8 promptness[.]”); *Chaffer v. Prosper*, 592 F.3d 1046, 1049 (9th Cir. 2010) (no tolling
 9 for delay caused by “reliance on [inmate] helpers”); *Corrigan v. Barbery*, 371
 10 F. Supp. 2d 325, 330 (W.D.N.Y. 2005) (“In general, the difficulties attendant on prison
 11 life, such as transfers between facilities . . . do not by themselves qualify as
 12 extraordinary circumstances.”). However, “a prisoner’s lack of knowledge that the
 13 state courts have reached a final resolution of his case” can constitute extraordinary
 14 circumstances, and thus “provide grounds for equitable tolling *if the prisoner has acted*
 15 *diligently in the matter.*” *Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir. 2009) (citation
 16 omitted) (emphasis added). Significantly, in the Ninth Circuit, a petitioner must “show
 17 diligence through the time of filing [his federal petition], even after the extraordinary
 18 circumstances have ended.” *Luna v. Kernan*, 784 F.3d 640, 651 (9th Cir. 2015).

19 The Court finds no such diligence here. While Petitioner’s notice regarding the
 20 Supreme Court’s decision may have been delayed,² Petitioner waited more than a year
 21 after the petition’s filing to follow up with *either* his attorney *or* the court. (*See*
 22 *Objections* at 3, 13-15, 29, 32); *see also Ramirez*, 571 F.3d at 997 (noting relevance of
 23 whether petitioner “acted diligently to obtain notice”). Moreover, Petitioner was made
 24 aware of his state case’s completion *at least* as early as October 2014. (*See Objections*
 25

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 27
 28 ² The Court notes that Petitioner’s appellate attorney told Petitioner to “keep [him] informed as
 to any change in [his] mailing address[.]” but does not know if Petitioner complied with that
 instruction. (*Objections* at 12.)

1 at 28, 48-49.) Yet Petitioner still waited until October 2015 – *nearly a year later* – to
 2 file his federal habeas petition. (*See* Pet. at 1, 38.)

3 Thus, in light of these self-inflicted and unexplained delays, the Court cannot
 4 find that Petitioner exercised such diligence as might justify equitable tolling. *See*
 5 *Ramirez*, 571 F.3d at 997; *Majano v. Long*, 2015 WL 1612016, at *7-10 (C.D. Cal.
 6 Apr. 8, 2015) (finding a lack of diligence where Petitioner allowed an “inexplicable
 7 four-month delay” between belatedly learning that his conviction was final and filing
 8 his federal petition).

9 3. Actual Innocence

10 Third, Petitioner argues that he is “actually innocent of the crime charged” and
 11 thus entitled to the “gateway” benefit of *Schlup v. Delo*, 513 U.S. 298 (1995).
 12 (Objections at 5-7.) For the reasons already set forth by the Magistrate Judge, the
 13 Court is unpersuaded. (*See* R&R at 4-6.)

14 Thus, in sum, the Court finds that tolling is unwarranted, the *Schlup* gateway is
 15 unavailable, and the Petition is untimely.

16 Accordingly, IT IS ORDERED THAT:

- 17 1. The Report and Recommendation is approved and accepted;
- 18 2. Judgment be entered denying the Petition and dismissing this action with
 19 prejudice; and
- 20 3. The Clerk serve copies of this Order on the parties.

21 Additionally, for the reasons stated in the Report and Recommendation and
 22 above, the Court finds that Petitioner has not shown that “jurists of reason would find
 23 it debatable whether”: (1) “the petition states a valid claim of the denial of a
 24 constitutional right”; and (2) “the district court was correct in its procedural ruling.”
 25 *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Thus, the Court declines to issue a
 26 certificate of appealability.

27 Nor is Petitioner entitled to an evidentiary hearing. *See Cullen v. Pinholster*,
 28 131 S. Ct. 1388, 1398 (2011) (AEDPA “requires an examination of the state court-

1 decision at the time it was made. It follows that the record under review is limited to
2 the record in existence at that same time *i.e.*, the record before the state court.”).

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4
5 DATED: December 3, 2015

A handwritten signature in dark ink, appearing to read "John F. Walter", is written over a horizontal line.

HON. JOHN F. WALTER
UNITED STATES DISTRICT JUDGE